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VIA FEDERAL EXPRESS

November 17, 2008

Honorable Chief Justice and Justices of the California Supreme Court
Supreme Court of California
350 McAllister Street
San Francisco, California 94102

Re: *Strauss et al. v. Horton et. al.*, No. S168047 [Petition for Writ of Mandate]

To the Honorable Ronald M. George, Chief Justice of California, and the Honorable Associate Justices of the California Supreme Court:

Pursuant to California Rule of Court 8.500(g), we respectfully submit this amicus curiae letter in support of the above petition for writ of mandate on behalf of The Pop Luck Club.

I. Statement of Interest

Amicus The Pop Luck Club (PLC) is the largest known gay fathers organization in California, presently consisting of hundreds of families, and is continuing to grow. PLC's mission is to advance the well-being of gay prospective parents, gay parents and their children. This is accomplished through mutual support, community collaboration, and public understanding.

Many PLC members got married in California between June 17, 2008 and November 4, 2008, others were legally married elsewhere with those marriages becoming recognized by California in June 2008, and many other members hope to marry in the future on the path to building a strong family unit complete with children. As this Court has noted, data from the 2000 census suggests that same sex couples in California were raising over 70,000 children. (*In re Marriage Cases* (2008) 43 Cal. 4th 757, 829, n. 50 (*Marriage Cases*)). Surely that number has increased substantially in the last eight years.

Committed relationships serve as a foundation for many PLC families, and it is of the utmost importance to the PLC membership that marriage remains an option for same-sex couples.

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PLC strongly supports the position and arguments set forth by petitioners in the three the pending cases (S168047, S168066, and S168078). As explained below, PLC writes to urge the Court to exercise its original jurisdiction to consider and decide this matter because of the paramount importance to the public.

The petitions themselves, as well as other supportive amicus letters, ably articulate the important legal arguments in support of invalidating Proposition 8, and this letter will not reiterate those points. The purpose of this letter is to draw the Court's attention to the unique impact that Proposition 8, if allowed to stand, would have on the *children* of same-sex couples.

II. Argument

Proposition 8 discriminates not only against same-sex couples, but also against the children being raised by same-sex couples. The family unit is the basic building block of our society, provides a stable environment for children, and is the best means of ensuring that children receive the necessary care and nurturing. (*Marriage Cases*, *supra*, 43 Cal.4th at pp. 863-864.) The following quotes from this Court's *Marriage Cases* decision demonstrate the importance of marriage to families consisting of same-sex couples and their children.

"Society, of course, has an overriding interest in the welfare of children, and the role marriage plays in facilitating a stable family setting in which children may be raised by two loving parents unquestionably furthers the welfare of children and society. It is these features California authorities have in mind in describing marriage as the 'basic unit' or 'building block' of society." (*Id.* at p. 815 (citations omitted).)

Further, "the institution of civil marriage affords official governmental sanction and sanctuary to the family unit, granting a parent the ability to afford his or her children the substantial benefits that flow from a stable two-parent family environment, a ready and public means of establishing to others the legal basis of one's parental relationship to one's children (citations omitted), and the additional security that comes from the knowledge that his or her parental relationship with a child will be afforded protection by the government

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against the adverse actions or claims of others.” (*Id.* at pp. 817-818 (footnote omitted).)

“This state’s current policies and conduct regarding homosexuality . . . recognize that gay individuals are fully capable of entering into the kind of loving and enduring committed relationships that may serve as the foundation of a family and of responsibly caring for and raising children.” (*Id.* at pp. 821-822.)

Further, “an interpretation of the constitutional right to marry simply confirms that a stable two-parent family relationship, supported by the state’s official recognition and protection, is equally as important for the numerous children in California who are being raised by same-sex couples as for those children being raised by opposite sex couples (whether they are biological parents or adoptive parents). This interpretation also guarantees individuals who are in a same-sex relationship, and who are raising children, the opportunity to obtain from the state the official recognition and support accorded a family by agreeing to take on the substantial and long-term mutual obligations and responsibilities that are an essential and inseparable part of a family relationship.” (*Id.* at p. 828-829 (footnotes omitted).)

Supporters of Proposition 8 will suggest that California’s separate but (not quite) equal domestic partnership is sufficient to protect the interests of same sex couples and their families. This Court, however, has already noted “that the unfamiliarity with the term ‘domestic partnership’ is likely, for a considerable time, to pose significant difficulties and complications for same-sex couples, and perhaps most poignantly for their children, that would not be presented if, like opposite-sex couples, same-sex couples were permitted access to the well-understood family relationship of marriage.” (*Id.* at p. 846.)

Proposition 8 attempts to take away the basic right to marry from gay and lesbian families despite this Court’s conclusion that a distinction “between the designation of the family relationship available to opposite-sex couples and the designation available to same-sex couples impinges upon the fundamental interest of same-sex couples in having their official family relationship accorded dignity and respect equal to that conferred upon the family relationship of opposite-sex couples.” (*Id.* at pp. 846-847.)

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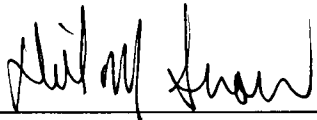
This Court has stated that “retaining the traditional definition of marriage and affording same-sex couples only a separate and differently named family relationship will, as a realistic matter, impose appreciable harm on same-sex couples *and their children*, because denying such couples access to the familiar and highly favorable designation of marriage is likely to cast doubt on whether the official family relationship of same-sex couples enjoys dignity equal to that of opposite-sex couples.” (*Id.* at p. 784 (emphasis added).) The Court should grant the petition thus preventing continuation of the harm to children and ensuring that all of California’s children have the opportunity to grow in families of equal dignity.

III. Conclusion

PLC respectfully requests that the Court exercise its original jurisdiction to decide the issues presented in the petition. This Court should invalidate Proposition 8 because it impermissibly alters the constitutionally protected family unit and erodes the dignity of familial relationships with a unique impact on the over 70,000 children living in households headed by same-sex couples. A sea change in the nature of Proposition 8 must first gain the approval of the legislature through the constitutional revision process before it is enshrined in California law.

Very truly yours,

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PROOF OF SERVICE

I, Alise Kabakoff, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand, 40th Floor, Los Angeles, California. On November 17, 2008, I served the within documents:

Amicus Curiae Letter in Support of Petitioners - The Pop Luck Club

[] by causing facsimile transmission of the document(s) listed above from (213) 626-8484 to the person(s) and facsimile number(s) set forth below on this date before 5:00 p.m. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.

[X] by placing the documents listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in this affidavit.

[] by placing the documents listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a agent for delivery, or deposited in a box or other facility regularly maintained by in an envelope or package designated by the express service carrier, with delivery fees paid or provided for, addressed to the persons at the addresses set forth below.

[] by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

See Attached Service List

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 17, 2008.


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